IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.20 OF 2006

IN

L.C.SUIT NO.2478 OF 2003

ALONG WITH

CIVIL APPLICATION NO.945 OF 2003

Municipal Corporation of
Greater Mumbai ...Appellants

Versus

Kelly Natwarlal Desai ...Respondent

.....

Mrs.Geeta Joglekar i/b Mr.V.K.Khatu for Appellants.

Ms.Dipti Das i/b Dunmorr Sett for Respondent.

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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 1, 2006.

P.C.

1. Heard Counsel for the parties.

2. This Appeal from Order challenges the order dated 6th June 2003 passed by the City Civil

Court at Bombay in L.C. Suit No.2478 of 2003. By that order, the Respondent/Plaintiff is permitted to re-fix or re-install the M.S.Grills into the same position with the same material and in the same dimension as they were before demolition. This direction was given during the pendency of the Notice of Motion for temporary injunction. The background in which the said order has been passed is that on 4th June 2003, ad-interim order of status-quo came to be passed by the Trial Court. It appears that before the status-quo order was passed, the suit structure was demolished. The Appellant Corporation therefore moved the Trial Court bringing this fact to the notice of the Trial Court. The Trial Court by the impugned order, instead, thought it appropriate that the Plaintiff be permitted to re-fix/re-install the M.S.Grills in the same position with the same material and the same dimension as they were before demolition.

3. This discretionary order was passed, having noted that the said grills were fixed by the Plaintiff only to safeguard his property. After the impugned order was passed on 6th June 2003, the

Respondent has given effect to the impugned order by re-fixing and re-installing the M.S.Grills in the same position with the same material in the same dimension. Two photographs to indicate this position have been placed before this Court, which are taken on record. From the photographs as produced, it does appear that the grills have been placed only as extension of wall so as to protect the property from being exposed to entry of any third party.

4. If it is so, at this distance of time almost after over two years, no fruitful purpose would be served by entering into the controversy raised in the present Appeal. Instead, while disposing of this Appeal, the Trial Court is directed to decide the Notice of Motion for temporary injunction as expeditiously as possible, preferably within six weeks from today on its own merits in accordance with law, uninfluenced by any of the observations in the impugned order or for that matter, the present order. In the event, the Trial Court finds that the offending structure is impermissible, it will be open to pass appropriate

orders including requiring the Plaintiff to remove the said structure at his costs, forthwith.

5. Appeal as well as accompanying Civil Application is disposed of on the above terms, leaving all questions open.

A.M.KHANWILKAR, J.